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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,247	03/15/2004	Andrew Harvey Barr	200208443-1	2266

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

ELAMIN, ABDELMONIEM I

ART UNIT	PAPER NUMBER
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2116

MAIL DATE	DELIVERY MODE
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08/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/801,247	Applicant(s) BARR ET AL.	
	Examiner Abdelmoniem Elamin	Art Unit 2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 8-13 are rejected under 35 U.S.C. 101 because the claims are non-statutory as not being tangibly embodied in a manner so as to be executable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enberg, US.

Pat. No. 6,718,213.

5. Claims 1, 8, 14-15, 17-20, Enberg teaches a power pricing plan equipment control method [*title, abstract*] comprising:

establishing a power pricing plan for operating rack equipment [*col. 2, lines 25+*]; and

controlling operation of said equipment in accordance with said power pricing plan [*col.*

2, 22-25].

Enberg fails to teach rack equipment.

However, Examiner asserts that rack equipments are well known in the art. These types of limitations are considered field of use, and are not patentably distinct.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to use the system of Enberg in a rack equipment, because it allows to conveniently and automatically vary power consumption during the day in response to a changing price of electricity [*see Enberg, col. 1, lines 50-54*].

6. Claims 2, Enberg teaches controlling said operation includes said rack equipment performance settings [*decreasing power delivered to the load, see col. 2, lines 17+*].

7. Claim 3, Enberg teaches controlling said operation includes changing power consumption by said rack equipment in accordance with said power pricing plan [*col. 2, lines 17+*].

8. Claims 4, 5, Enberg teaches said power plan indicates a reduction in a voltage and a frequency of said rack equipment when a price for power increases [*inherently, in rack equipments power management is achieved by adjusting voltage and clock frequency*].

9. Claim 6, Enberg teaches said controlling said operation comprises automatically adjusting said performance interactively [*col. 1, lines 50+*].

10. Claim 7, Enberg teaches receiving an indication of a power pricing change; and analyzing correspondence of said power pricing change to performance control instructions included in said power pricing plan [*receiving real time price information from a utility company, col. 2, lines 30-33*].

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11. Claims 9, 13, Enberg teaches a telemetry-monitoring module for monitoring characteristics and activity of rack equipment associated with said adjustments commands [*inherent*].

12. Claim 10, Enberg teaches a power pricing event spawning module for generating power pricing events [*col. 7, lines 62+*].

13. Claim 11, 16, Enberg teaches said instruction generation module comprises functionality for generating a command to postpone processing [*col. 6, lines 12-14*].

14. Claim 12, Enberg teaches said power pricing plan information is an agreement between a host and a client and is structured in manner to accommodate business activities of said client [*col. 7, lines 62+*].

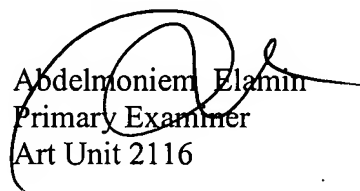
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdelmoniem Elamin whose telephone number is 571-2727-3674. The examiner can normally be reached on MON - THUR 10:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rehana Prveen can be reached on 571-272-3676. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Abdelmoniem Elamin
Primary Examiner
Art Unit 2116

August 29, 2007